

NPDES PROGRAM DESCRIPTION

The Maine Department of Environmental Protection (“Department”) is seeking delegation to administer EPA’s National Pollutant Discharge Elimination System (“NPDES”) program, including permitting, compliance inspections, enforcement, general permitting, storm water permitting, and pretreatment. Pursuant to 40 CFR 123.22, this document describes how the Department intends to structure and operate the delegated program.

I. Introduction and Overview of Program

Maine has, for many years, operated a waste discharge program paralleling EPA’s NPDES program and has conducted independent permitting, inspections, enforcement, water quality evaluations and other related functions for point source discharges in the State. The Department’s water program is more broad than the required NPDES program in that it regulates not only direct and indirect discharges to surface waters but certain discharges to ground waters as well. Currently, there are approximately 350 permits issued to municipal, industrial and commercial sources. The program also has issued permits for privately owned discharges of sanitary wastes, many of which are not now permitted by EPA. The vast majority of these additional point sources, nearly 2,000 in number, are mostly residential sources located along the coast, and are managed in the Overboard Discharge (“OBD”) program. In addition to permitting and inspections, the OBD program includes elements to assist in elimination of these discharges through grant programs. The Department regulates all discharges of wastewaters applied to the surface of the earth through spray irrigation and similar practices, the location of salt/sand piles, disposal of contaminated snow in surface waters and the use of aquatic pesticides. The Department issues permits for discharge of non-domestic wastes through sub-surface (septic) systems and for domestic wastes discharged through municipally owned septic systems. Non-municipal septic systems for domestic wastes are reviewed and approved by the Department of Human Services, Division of Health Engineering. Finally, the Department administers the Underground Injection Control program. Maine’s current program does not regulate most point source discharges of storm water and involvement in the pretreatment program is limited participation in EPA’s program by doing some inspections, and concurrent reviews.

Functional elements of the water program includes administration, permitting, inspections and facility assistance, enforcement, water quality evaluation, pretreatment, storm water discharge regulation and data management. All of these functions will be conducted by the Department’s Bureau of Land and Water Quality, which is headquartered in Augusta with a presence in three regional offices. Most permitting and formal enforcement will be done through the Augusta office, while the regional offices will provide inspections, compliance evaluation, technical assistance, complaint investigations and other fieldwork.

Initial delegation is sought for all program elements except for pretreatment. It is proposed that delegation for pretreatment be authorized not later than July 2000. Authority for the sludge program is not being included in Maine’s application for delegation. The State does, however, regulate the disposal of sludge with a program similar to EPA, and may seek delegation independently at a later date.

II. Organization and Structure

The Department is charged with most environmental activities in Maine. Created in State law at 38 MRSA, Section 341-A, the Department consists of the Board of Environmental Protection and the Commissioner. The Commissioner is appointed by the Governor, subject to confirmation by the Senate. The Commissioner is the chief administrative officer and has duties including employment of Department staff, organization of the Department, maintaining records, entering agreements, issuing clean-up orders, and is the permitting authority for most regulatory actions. The Commissioner may assign or delegate duties to the staff of the Department, and this may include the authority for the Deputy Commissioner and Bureau Directors to sign permits.

A. Board of Environmental Protection

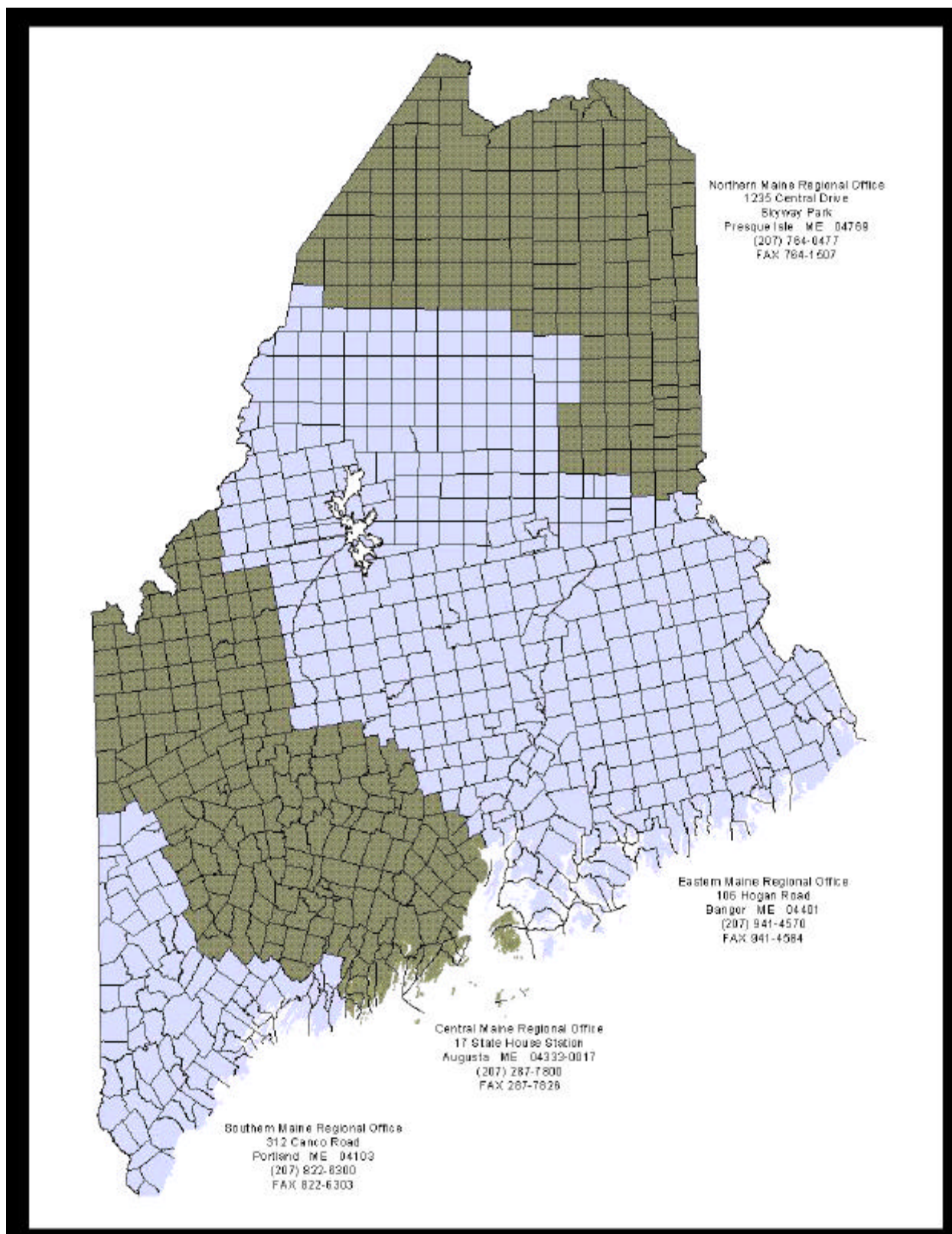
The Board of Environmental Protection (“Board” or “BEP”) consists of ten citizen members appointed by the Governor for staggered four year terms, subject to confirmation by the Senate. The Board’s responsibilities, as described in 38 MRSA, Section 341-B, are to, “provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions. The board shall fulfill its purpose through rulemaking, decisions on selected permit applications, review of the commissioner’s licensing and enforcement actions and recommending changes in the law to the Legislature.” The Board generally meets once or twice per month, and its duties and functions are described at 38 MRSA Sections 341-C through 341-F. Following an opportunity for public hearing in accordance with the State’s Administrative Procedures Act (APA), the Board must approve all Department rules. The Board may assume from the Commissioner primary permitting jurisdiction for any application and must do so for certain applications having significant interest or policy implications. The Board acts to hear appeals of permitting decisions by the Commissioner, and entertains requests for reconsideration of its decisions. Other duties of the Board include approval of administrative consent agreements and modification, revocation or suspension of permits. Decisions of the Board may be appealed to the Superior Court.

B. Department of Environmental Protection

Figure 1 shows the organization of the Department. The Department is organized into three program Bureaus along media lines. These are the Bureaus of Air Quality, Remediation and Waste Management and Land and Water Quality. Additionally, the Office of the Commissioner provides program support through policy development, pollution prevention, and education and outreach. The Commissioner’s Office also provides support functions such as computer services, personnel, accounting and a staff-training unit. Regional offices are located in Portland, Bangor and Presque Isle. Each regional office offers a wide range of Department services, and the water program’s primary presence in the regions is to deliver facility inspections, responses to citizen complaints, water quality studies and participation in OBD programs. Figure 2 presents a map showing the regional boundaries.

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Figure 2
Organizational chart of the department

Figure 2. Department of Environmental Protection Administrative Regions



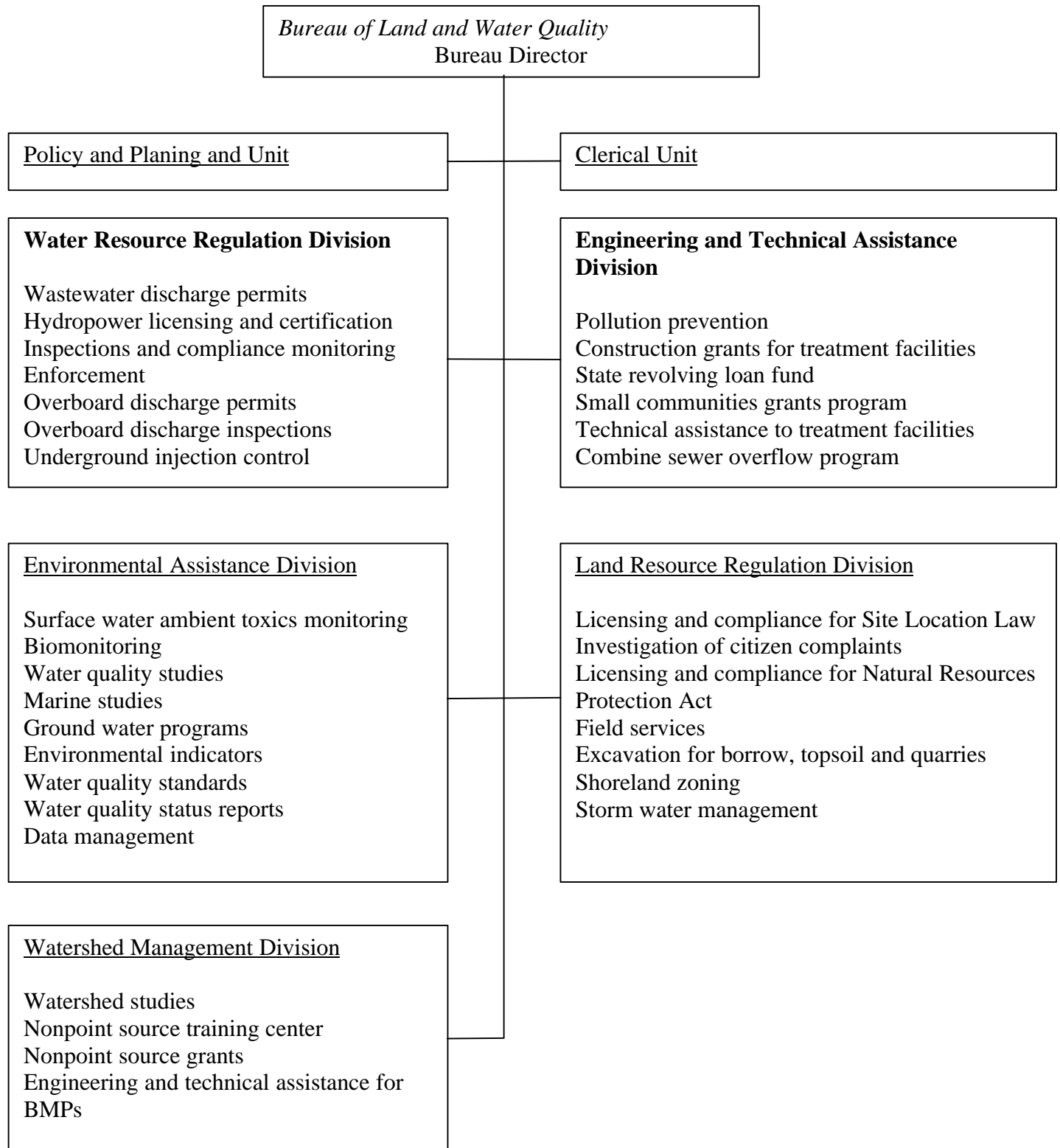
C. Bureau of Land and Water Quality

The Bureau of Land and Water Quality is divided into five divisions: Water Resource Regulation, Land Resource Regulation, Environmental Assessment, Engineering and Technical Assistance and Watershed Management. The Bureau also has a clerical unit, policy and administrative staff, and a data management unit attached to the Division of Environmental Assessment. See Figure 3. The Division of Water Resource Regulation will be primarily responsible for administration of the NPDES program, and will be discussed in greater detail later in this section. Following is a brief description of the other divisions in the Bureau, with focus on their involvement with NPDES functions and issues.

- **Land Resource Regulation.** The Division regulates construction and land use activities through the State's Site Location Law, the Natural Resources Protection Act, shoreland zoning, and mining laws. LRR administers the State's current storm water law that affects construction activities, and will assume responsibility for the NPDES storm water program. The existing State law parallels federal requirements for construction and has additional requirements for development in sensitive lake watersheds, but exempts point source discharges regulated by NPDES. Because of its experience and present technical resources, LRR is in the best position to assume the NPDES storm water program for non-construction point sources. LRR may investigate and enforce against incidents involving discharges of soil or silt in to waterways since these violations are often caused by activities regulated by LRR. In pursuing violations, LRR staff will cite waste discharge and water quality laws in addition to statutes administered by the Division. The presence of both Land and Water Resource Division staff in all regional offices has allowed development of strong working relationships with no communication difficulties.
- **Environmental Assessment.** This Division performs a wide range of water quality activities to determine attainment of applicable classification criteria, and to evaluate the impact of proposed pollutant discharges. Ambient water quality studies and waste load allocations are conducted, with emphasis on doing studies of watersheds in advance of planned permitting cycles. The Division also conducts biological assessments in support of the surface water classification system. There is a separate section that administers lake water quality programs, including restoration projects and public education. Another section is focused on marine water quality issues. There is also a section for ground water assessment and protection. Finally, the Division is active in coordinating environmental education in schools statewide.
- **Watershed Management.** The Division's primary responsibilities are in coordination of non-point source programs and education. The division will support the NPDES program by providing technical assistance in support of the storm water program and resolution of complaints involving run-off induced pollutants or problems.
- **Engineering and Technical Assistance.** This Division's responsibilities involve primarily municipal and industrial treatment systems, and it provides direct support for the NPDES program. The Division administers the State's construction grants and SRF programs for the construction of municipal treatment facilities. Additionally, it provides engineering and

Figure 3.

Organization of the Bureau of Land and Water Quality



technical reviews of plans, specifications and operational proposals for all treatment facilities. The technical assistance unit assists treatment facilities and Department inspectors with process control and troubleshooting advice. The unit also is the bureau's primary resource for pollution prevention projects, acting independently and in departmental pollution prevention efforts coordinated by the Commissioner's office. The division also has a unit that manages the Department's CSO abatement program, including study grants, review of facility plans and implementation of construction projects. Finally, the division manages two grant and engineering programs to address discharge of sanitary wastes from individual or small sources. One is the OBD removal program that helps to fund elimination of existing, treated discharges on a prioritized basis with a primary objective of opening shellfishing areas. The other program is the Small Communities Grants Program designed to treat or eliminate sanitary discharges using cluster type systems and working through grants to municipalities.

D. Division of Water Resource Regulation

As noted above, the Division of Water Resource Regulation will have primary responsibility for administering the NPDES program. The Division is organized in four sections including NPDES Permitting, Other Permitting programs, Compliance and Technical Assistance and Enforcement. See Figure 4. For the purposes of this discussion, the following functional descriptions will assume full staffing and duties envisioned for operation of the NPDES program.

- **NPDES Permitting.** This section processes applications for traditional NPDES point source discharges, discharges to ground water, the industrial pretreatment program, the use of aquatic pesticides, and property and sales tax exemptions. All permitting activities are conducted from the Augusta office. The section includes five professional staff persons including a working supervisor dedicated to issuance of permits. Another position dedicated to implementation of the pretreatment will be added to the section as that element of the program is assumed by the end of the year 2000. Finally, a clerical position is available to assist the other staff with administrative duties, freeing up more their time for technical reviews and permit development. In addition to the permit section staff, the regional office compliance staff will be fully involved in the development of permits to assure all operational, compliance and local water quality issues are addressed. This technical support will extend the permit section's capability and efficiency. The issuance of permits and the reduction of the historic backlog of expired permits will be the NPDES program's top priority. As a contingency to assure permitting goals are met, some compliance staff may be reassigned to the permit section. Alternatively, some permit applications may be processed by compliance staff in the regional offices in order to reduce backlogs or address regional initiatives. However, it is anticipated that the five permitting staff will be able manage the expected workload over the five-year permit renewal cycle. Maine has approximately 95 NPDES major facilities. On a five-year basis, this equates to only 4-5 major permit per staff person per year. In recent years, Department has received only a relatively few applications for new permit, and most of those are minor facilities. With elimination of other discharge sources, the total number of permits has remained fairly constant. Permit renewals will generally track the watershed approach established several years ago in conjunction with EPA. Under this plan, the state is divided into five regions, one of which will be the focus for permit renewals each year on a rotating basis. Water quality studies and total maximum

daily load evaluations will be conducted by the Division of Environmental Assessment for critical segments in each watershed one to two years in advance of the permitting year.

- **Other Permitting.** Also centered in the Augusta office, this section addresses other permitting and regulatory programs. These include OBD permitting, dams and hydropower regulation, the UIC program, and sand/salt pile regulation. The section also will be implementing a recently approved grant to increase the availability of pump-out facilities for boats along the coast. There are currently four staff persons assigned to the section, although it is anticipated that another position will be added to manage the boat pump-out program.
- **Compliance and Technical Assistance.** This section has a total of 11 staff persons and maintains a presence in the four Department offices around the state. Its primary function is to conduct compliance inspections and to provide technical assistance to assure the best possible performance and effluent quality at all treatment facilities. Within the regions, each facility (both majors and minors) is assigned to one inspector who has responsibility for conducting routine and formal inspections, addressing compliance problems, and acting as a resource for any issues that may arise. This latter function may include technical assistance, regulatory questions, pollution prevention activities and safety concerns. Section staff in the regional offices will also respond to citizen complaints. In addition to NPDES facilities, the section is charged with inspections of OBD facilities. State law requires that each OBD be inspected once or twice per year. One full time staff person and several seasonal aides are involved in this inspection program. Finally, the Compliance Section staff participate in water quality studies to collect data.
- **Enforcement.** This section is centered in Augusta and has a total of four staff persons. As indicated above, initial compliance efforts and some complaint are handled by the Compliance Section. Where these efforts to obtain compliance are unsuccessful or if violations are more serious, the Enforcement Section will assume primary responsibility for resolution of the violation. More formal actions such as development of consent agreements, use of Rule 80(k) and referral to the AG's office are available. However, less formal methods may still used where appropriate to the circumstances of a case. Enforcement support is provided for all water program and laws, including water quality violations, discharges to ground water, unpermitted discharges, and reporting or administrative problems. The Enforcement Section will track compliance significant non-compliance and work with EPA in development of Quarterly Non-Compliance Reports. The section also is responsible for directly responding to citizen complaints in the Augusta region and supporting complaint investigations in the other regions as needed. Shell fish restoration is a priority for the section through sanitary surveys in cooperation with the Department of Marine Resources, the OBD replacement program, the Small Communities Grants Program and various local groups and officials.

E. Department of the Attorney General

The Department of the Attorney General is an independent agency of Maine State government that provides the Department's legal services. The AG's Department is organized into various divisions, one of which is the Natural Resources Division. That division serves the Department as well as other state agencies, such as the Departments of Agriculture, Conservation, Marine

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Figure 4
Organizational chart for WRR

Resources and Inland Fisheries and Wildlife. The Natural Resources Division is staffed by a total of one part-time and five full-time attorneys, one of whom is the lead attorney for the water program. The Attorney General reviews proposed rules prior to formal adoption, provides legal advice to the Board at its regular meetings, renders general legal advice to the Department staff, prosecutes violations of laws administered by the Department and defends the Department in cases of appeals or opposing suits. The AG is a full party to administrative consent agreements used to settle many violations of Department laws and rules. Court actions by the Attorney General are typically brought in both the names of the Department and State of Maine. Relationships between the Department the Attorney General are addressed in a Memorandum of Understanding.

III. Personnel and Funding

The Bureau of Land and Water Quality has an equivalent of 133 authorized full time staff positions, including new positions to be added in support of the NPDES program. Of these, 29 positions have been identified as primarily involved with the NPDES program (excluding the OBD program), and are involved with administration, permitting, compliance inspections, enforcement, water quality, data management and clerical support. It is important to note that many other positions in the Bureau contribute to the NPDES program and improving water quality, as discussed in the general description of the Department Organization and Structure.

To assist in development of the NPDES program, the Department formed a stakeholder group, the Delegation Advisory Team, which included various interests in the State and the EPA. This group met many times over a period of two years and reviewed all requirements of a delegated program. Considerable attention was given to staffing levels and funding, and as part of that process each program element was reviewed to identify current needs and shortcomings and the additional demands for staff that would be created through delegation. It is important to note that the Department's objective is to not only to assume the NPDES program but to adequately meet other program needs as well.

Table 1 lists the NPDES 29 positions and associated costs. In preparation for NPDES delegation, a total of eight new positions to be funded by permit fees were authorized by the Legislature in a bill effective July 1998. In the legislation, two positions, one for pretreatment and one for compliance will be phased in during the second year of the program. This will help mitigate the impact of fee increases and allow incremental increases in staff, making training and transitions smooth over a reasonable time frame. The position for the storm water program is available in the Division of Land Resource. The job descriptions for the positions involved in the NPDES program may be found in Appendix A.

The costs shown in Table 1 represent the total expenses for the first two years of the program. Salaries and benefits include State contributions to the pension system, insurance, etc. The "all other" costs are applied to all positions and cover expenses for office supplies, travel, training, laboratory expenses, etc. Indirect costs are applied to positions not funded by the State's General Fund, and cover Departmental overhead costs for administration, accounting, computer services,

etc. Three funding sources, the State's General Fund, Clean Water Act grants, and fees share the total program costs. Following is a summary of the first two years of costs and funding.

<u>Funding Source</u>	<u>Year One</u>		<u>Year Two</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
State General Fund	\$651,921	39%	\$674,130	37%
Federal Grants	\$510,506	31%	\$527,847	29%
Permit Fees	<u>\$495,533</u>	<u>30%</u>	<u>\$630,332</u>	<u>34%</u>
Total	\$1,657,960	100%	\$1,832,308	100%

Reliance on these three independent revenue sources will help to provide for financial stability. The Federal grants are under section 106 of the Clean Water Act and have remained fairly constant for a number of years. State General Fund appropriations supporting the Water Program were increased in 1997 to allow the transfer of four positions from the other funding sources to the General Fund. This shift helped to provide the current balance between funding sources and avoids too much reliance on permit fees as the eight new positions for NPDES delegation are added. The State's General Fund appropriation has been a stable funding source in recent years. In the State's budgeting process, funding for existing General Fund positions is typically addressed by the Legislature prior to consideration of requests for new or expanded services or programs. The State is on a biannual budget. Permit fees are established under a new system effective in July 1998. The system includes base fees applicable to all permits in one of 22 different categories of discharge activities. A single base fee applies to each permit. Adjustments are made for multiple discharge points regulated in the same permit and in some cases, a water quality impact fee based on the facility's dilution factor. Charges are also made for the quantity of pollutants actually discharged or permitted to be discharged, whichever is most appropriate. The enabling law for the fee system can be found at 38 MRSA, Section 353-B.

The Department's personnel turnover rate is estimated to be in the range of 3 – 5%. The Water Program has not experienced serious problems due to the personnel turnover. During the past several years, five NPDES positions have been vacated, with two of those being through retirements. Additionally, the UIC position was vacant for a period of time due to an employee's serious illness. Recruitment and replacement of employees is generally not a problem. When a position is vacated, the position itself remains authorized and refilling it is a routine administrative function. The Commissioner is typically the final approval authority for refilling positions. Most positions are filled competitively from existing personnel registers of qualified candidates maintained by the State's Bureau of Human Resources. Some positions, such as Assistant Engineer, that are in higher demand may be filled through direct hiring by the Department. In all cases, job vacancies are posted internally to allow current employees the opportunity for promotions or lateral transfers. Supervisors are provided with a list of the most qualified candidates meeting the requirements for a specific job, and a final selection is made through a standardized interview process. In most cases, a position can be refilled within 2 – 4 months of it being vacated.

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Table 1
Program costs

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Table 1, continued

IV. General Authorities and Administrative Procedures

Maine has issued and enforced State discharge permits since at least the 1970's in a program that parallels the requirements of the Clean Water Act. Consequently, many of the laws, programs and procedures necessary for operation of the NPDES program have been in place for many years. The foundation for regulation of wastewater discharges in Maine is 38 MRSA, Section 413 that is a broad prohibition against direct or indirect discharges of pollutants without a permit to do so from the Department. The law applies to discharges to both ground and surface waters of the State from both point and non-point sources.

A. Statutory Provisions

Several sections in the State law affect the consideration of permit applications and conditions that may be included as permit limitations. General requirements are found in 38 MRSA, Sections 414, 414-A and 464. The discharge of toxic pollutants, including dioxin and related compounds, is governed by 38 MRSA, Section 420. Many of Maine's statutory provisions are similar or refer to Clean Water Act requirements, although several are specific to Maine's program:

- The discharge of color from pulp mills is limited by 38 MRSA, Section 414-C;
- Log driving and storage is addressed in 38 MRSA, Section 418;
- Discharges from watercraft and motor vehicles to inland waters are prohibited by 38 MRSA, Sections 423 and 423-A;
- New discharges to streams having drainage areas less than 10 square miles are prohibited by 38 MRSA, Section 464(4); and
- New discharges are prohibited to classes AA, A, GPA and SA waters by 38 MRSA, Sections 465, 465-A and 465-B.

In order to conduct compliance inspections and investigations, 38 MRSA, Sections 347-C and 413(3) grant the Department staff a right of entry for the purposes of inspections, sampling and access to records. The violation of any law, rule, permit or order of the Department is generally addressed in 38 MRSA, Sections 347-A through 348, where administrative and judicial remedies are authorized. These remedies include administrative consent agreements, enforcement hearings, emergency orders, and judicial actions. General civil and criminal penalties, as well as authority for consideration of economic benefits and supplemental environmental projects are addressed in 38 MRSA, Section 349.

The authority for pretreatment programs is found in 38 MRSA, Section 414-B, which allows adoption of rules consistent with the federal program, inspections of industrial users and enforcement actions in support of local pretreatment programs. Provisions are also made for inclusion to allow monitoring of industrial users in the conditions of permits for publicly owned treatment facilities.

Statutory deadlines apply to certain processing steps for all applications. These are explained in the section on permit processing procedures. Additionally, new applications are subject to maximum processing times for making final decisions. Processing times for various types of applications are published annually by the Department. In the event a decision is not made

within the specified time, part or all of an application fee must be refunded. However, exceeding a processing time does not constitute approval of the application.

For both Commissioner and Board permit decisions, there are two possible routes for an applicant to appeal. An appeal does not stay the permitting decision. A decision by the Commissioner may be appealed to the Board. The Board may hold a hearing on the appeal, and vote to affirm, modify or reverse the Commissioner's decision. In the case of a permit decision originally made by the Board, a petition to the Board for reconsideration may be made within 30 days of the decision. The Board will decide whether or not to reconsider the matter. If it does reconsider, the Board may hold a hearing, and vote to affirm, modify or vacate the original decision. As an alternative to an appeal to the Board or a petition for reconsideration, a person may appeal directly to the Superior Court. Any decision of the Board may also be appealed to the Superior Court. An appeal must be filed within 30 days, except that non-parties to a decision have 40 days in which to appeal to the Superior Court. Appeals to the Superior Court are governed by the State's Administrative Procedures Act, Title 5 MRSA, Chapter 375, and Superior Court decisions may be appealed to the State Law Court. Figures 5A and 5B show the general flow of the appeal processes for Commissioner and Board decisions, respectively. Board actions are governed by 38 MRSA, Section 341-D, and judicial appeals fall under 38 MRSA, Section 348. Under State law, the provisions of a permit remain in force until an appeal is resolved.

As set forth in 38 MRSA, Section 414(6), all water program information held by the Department is available to the public unless specifically excluded. Exclusions are limited to trade secrets. In the event that the Department requires additional information for permitting or compliance needs, it may request the necessary information. If a permit application is submitted without all of the basic information required on the forms, the application will be returned to the applicant without action. If more information is needed to complete processing of the application, the staff will request it verbally or in writing. In the event that the information is not provided, the application may be denied. To support compliance programs and investigate possible violations, the Department may, under 38 MRSA, Section 414, order that information be submitted in a fashion similar to CWA Section 308 requests. The Commissioner and Board are also authorized by 38 MRSA, Section 345-A, to issue subpoenas to compel the production of records, and the Court can enforce these subpoenas if necessary.

B. Regulatory Provisions

To supplement the State's statutes, the Department rules, Chapters 520 through 529, contain NPDES program requirements. These rules are largely taken from the federal regulations required for delegated programs as cited in 40 CFR 123.25. The Underground Injection Control program requirements are found in Chapter 543 of the Department's rules. The discharge of toxic pollutants is addressed in Chapter 530.5.

In addition to the foregoing laws and rules that support the NPDES program, Maine's program includes additional special requirements for certain discharge sources and activities. One of the most important of these is the OBD program that discharges of domestic wastewater from non-municipal sources to surface waters. Many of these discharges are in coastal areas where they may affect shell fishing. In an effort to eliminate OBD's, the Legislature has placed additional

Figure 5A.

Appeals of Commissioner Decisions

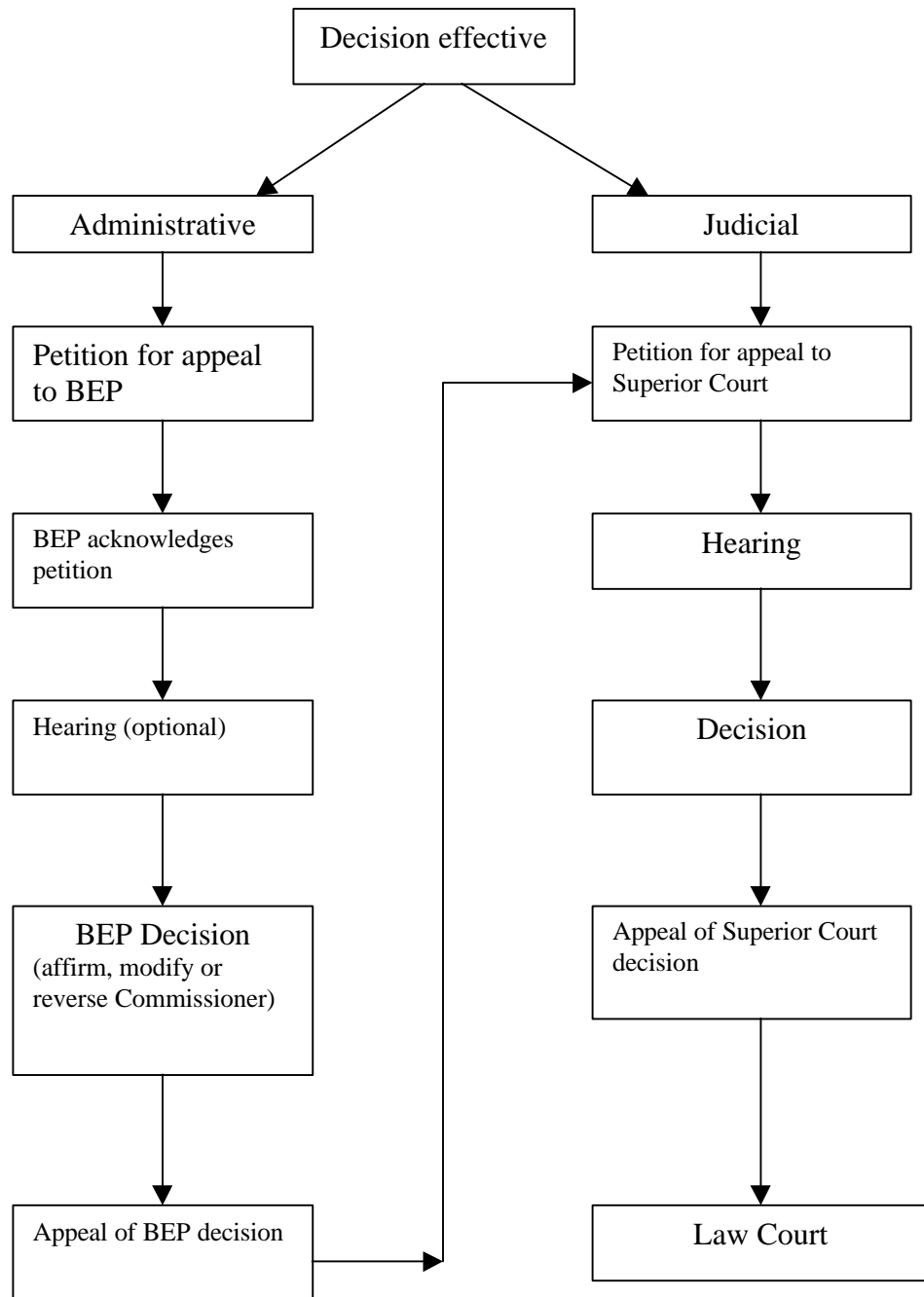
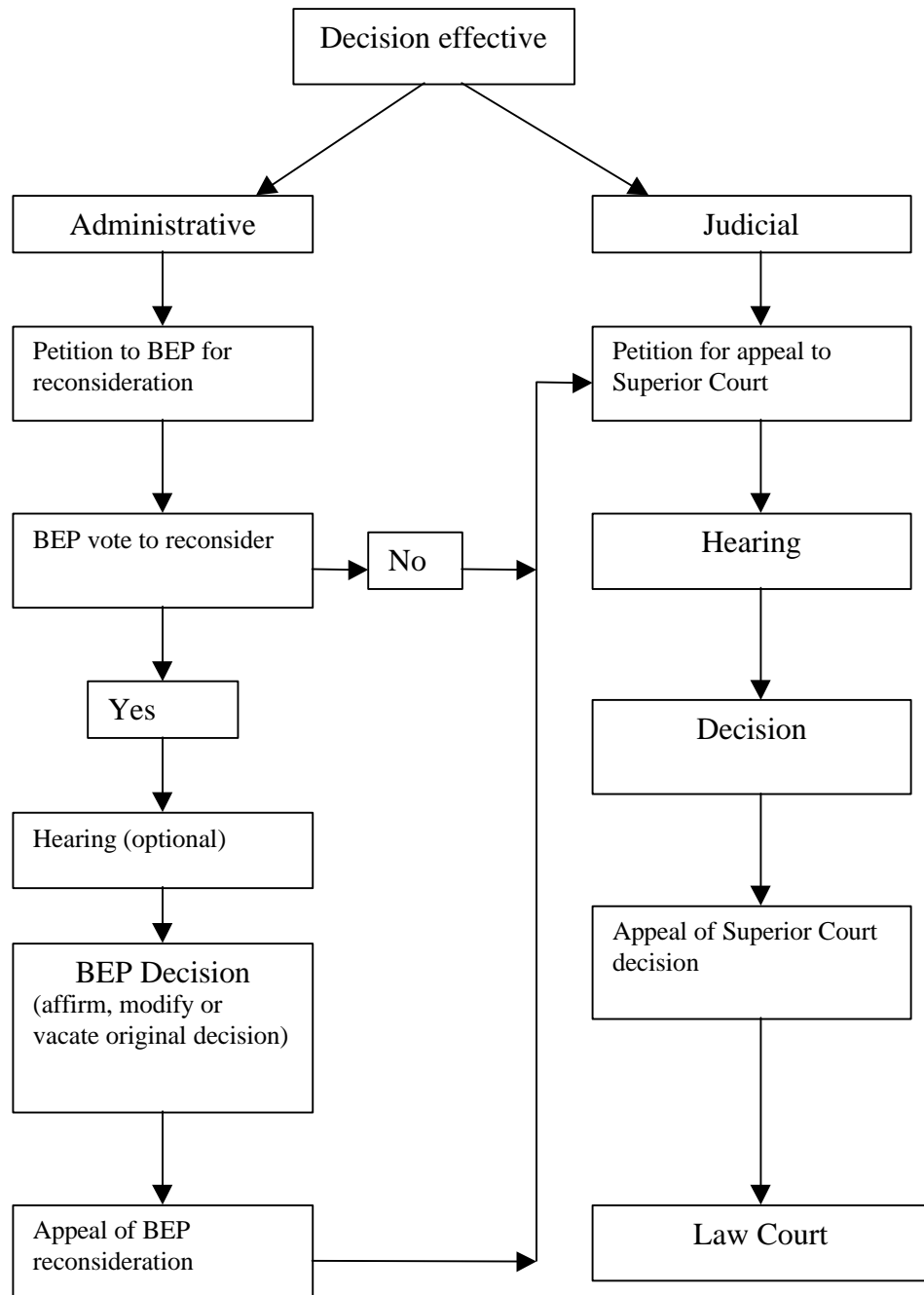


Figure 5B.

Appeals of Board of Environmental Protection Decisions



restrictions on them. New or increased discharges of this type are prohibited by 38 MRSA, Section 464(4). The preferred best practicable treatment for OBD sources is elimination through installation of non-discharging alternatives such as septic systems or connection to a public sewer. The State maintains a grant program to assist in the removal of OBD discharges on a prioritized basis as funds allow. Existing discharges must be treated, and secondary treatment is typically provided through use of mechanical treatment or septic tank and sand filter systems. Disinfection is also required. If there are technological alternatives to a continued direct discharge (such as a septic system), a “conditional permit” must be issued. This permit is essentially the same as a regular discharge permit, but with the stipulation that the discharge must be terminated within six months of the Department offering grant money to assist with elimination of the discharge. Rules for the OBD program are found in Chapter 596.

The APA governs administrative procedures for the processing of applications. The APA covers rulemaking, adjudicatory proceedings, licensing and judicial reviews of agency actions. The APA provides that receipt of a timely and complete application for renewal of a permit will extend the permit past its stated expiration date until final agency action is taken on the application. One part of the APA that requires the Administrative Court to revoke or suspend a license does not apply to wastewater permits. Pursuant to 38 MRSA, Section 414-A(5), the Board of Environmental Protection may take those actions. In addition to the APA, four Department rules are applicable to the processing of applications and certain compliance actions.

- Chapter 2, Rules Concerning the Processing of Applications;
- Chapter 20, Regulations for Hearings on Applications;
- Chapter 30, Special Regulations for Hearings on Applications of Significant Public Interest; and
- Chapter 40, Regulations for the Conduct of Enforcement Hearings

Of these, Chapter 2 applies to all applications received by the Department, including requests for modifications and transfer of ownership. Chapter 2 requires that the public notice of an application to be made at the time it is filed with the Department. The public comment period remains open until a final decision is made. This process allows as much public input as possible and gives an opportunity for issues to surface early in the processing of an application. With this information, initial draft permits can be more responsive to issues, rather than needing to address comments on a formal draft. Copies of draft permit will be provided to all persons who request them, and these persons will be added to the distribution list for all further notices and drafts relating to the permit in question. Additionally, copies of notices and drafts are routinely sent to persons on standard distribution lists for the NPDES program as required by Chapter 522 and parallels 40 CFR 124.10(c). The Commissioner makes the decision on most applications, and the Board decides only those involving new policies or rules, important policy questions or significant public interest. However, any interested party may request that the Board consider assuming jurisdiction of any application. Hearings on applications may be held by either the Board or the Commissioner, and are discretionary in most cases. A hearing, or opportunity for one, is required for establishment of certain mixing zones pursuant to 38 MRSA, Section 451. Informal public meetings may also be held in situations where a formal hearing is not required.

Hearing procedures that reflect the requirements of the APA are contained in Chapters 20, 30 and 40. The Board would use similar procedures in considering an action to modify, suspend or revoke a permit.

C. Data Management Systems

The Department will use a number of tracking and database tools to assist with management of the NPDES program. These systems currently exist or are being developed, but may be expanded or enhanced to improve their efficiency or scope to accommodate utilization of EPA's national database and additional staff and program responsibilities. To assist with data management, an additional clerical position is being added. The data management systems include:

- The Application Tracking System (ATS). This system is used Department-wide to track the receipt of permit applications and to monitoring their progress through the review, issuance and appeals steps. The system is able to produce various reports on the applications received and decisions issued during any given time period. It can also provide information on the current status of an application at any given time. ATS is on the Department's computer network and is available on a real-time basis to all staff and managers on personal computers.
- The Permit Compliance System (PCS). The Department has shared responsibility with EPA for this system for many years. Under the current system, EPA codes all major facilities into PCS and DEP codes minor facilities. The Department prints, mails, receives and enters information from Discharge Monitoring Reports (DMRs). The PCS system is very difficult to use and not readily available to program staff and managers. The Department has developed tables using Oracle software that mirror data in PCS. This has allowed the Department to download data from the national database into Oracle and provide far greater access to PCS data. Through report-writing software, PCS data is made available to all program staff and management to review facility information and performance. A number of canned reports have been created for staff to run on desktop computers and are accessible in all regional offices. Additionally, data can easily be saved into spreadsheets such as Excel to facilitate trend analysis and other data manipulation. New DMR entry screens have been developed and are used to in the regional offices to make DMR entry more timely. Through delegation with additional staff time available, full access to all facility records and continued improvements in local software, it is expected that the effective use of PCS will continue to improve.
- The Combined Sewer Overflow Tracking System. In order to monitor the many construction projects and compliance milestones associated with CSO abatement, DEP has set up a separate tracking system. The system records all CSO-related projects and generates letters to permittees advising them of up-coming compliance dates or, if necessary, addresses past due reports. It also is able to record the amount of money expended on abatement projects. The Department will be working to expand the system to include information from annual CSO reports and evaluate the results of abatement projects.
- The Complaint Tracking System. As the Department receives citizen complaints, they are logged into a tracking system. The system allows sorting of complaints in various ways to

track the number, geographic locations and types of complaints, and to record actions taken and timeliness of responses.

- The Water Compliance Database. This system is under development. Plans call for using the system to track compliance trends at treatment facilities in order to identify potential problems and develop focused or targeted inspection plans to avert serious violations. Trend analysis may also be used to identify training and technical assistance needs. The system will have a number of tables not included in PCS, enabling inspectors to track compliance activities at various treatment facilities.
- The Toxicity Tracking System. Maine requires both Whole Effluent Toxicity and priority pollutant tests to be conducted at most major municipal and industrial treatment facilities. To store and evaluate these data, the Department has set up a toxicity database. This system performs exceedence and reasonable potential calculations and other evaluations on test results as they are received.
- The Fee System. In order to implement the new annual fee program, a computer system to calculate fee amounts and generate bills is being implemented. This system is linked to the PCS data downloaded into Oracle. Both basic facility information and discharge monitoring data is used as the basis for billing of many facilities.

D. Continuing Planning

The Department uses a number of vehicles in its continuing planning efforts. At the State level, there is a strategic plan that encompasses environmental and natural resource issues and allows for coordination between agencies and programs having similar objectives. Under the statewide plan, the Department maintains its own strategic plan that addresses broad policy issues and various media-specific programs. Maine's Performance Partnership Workplan includes the goals of the Department's strategic plan and serves as the foundation for each program's ongoing activities. In 1997, the State formed the Maine Environmental Priorities Council to continue planning work begun by the Maine Environmental Priorities Project. The Council is comprised of a wide range of agencies and interest groups in the State, and in winter 1998 published, "An Assessment of the Quality of Maine's Environment". The Council has been tasked by the Governor to set targets for key environmental indicators. The Department expects to work closely with the Council in developing these targets and issuing periodic reports. It is hoped that these reports and indicators can be linked to the Department's strategic plan. Specifically for the Water Program, the Division of Environmental Assessment prepares reports required by sections 305(b) and 303(d) of the Clean Water Act. The Division is in the process of developing a five year master monitoring plan in an effort better assess water quality conditions and measure the success in meeting various strategic objectives.

V. Permit Processing Procedures

As noted previously, the State's Administrative Procedures Act, and Chapters 2, 20, 30 and 522 of the Department's rules govern the processing of applications. Chapter 522 contains those parts of the NPDES regulations that are specific to water program application processing

procedures that differ from or are not included in the other rules. Figures 6A, 6B and 6C show the various steps in the Department's application processing procedures for new applications, renewals of existing permits and modifications. New applications do have some additional restrictions for processing criteria, technical review (e.g. antidegradation) and are subject to processing time restrictions. All applications undergo the same initial steps, as shown in Figure 6A. If the Board assumes jurisdiction or decides to hold a formal hearing, the application falls under the control of the Board, and the steps in Figure 6B are followed. However, the Commissioner makes the decision on the vast majority of applications, following the processing steps in Figure 6C. Whether the Board or Commissioner makes decisions, the processing steps are similar. The following is a detailed description of Maine's application processing and permit issuance system.

A. Initial procedures for all applications (See Figure 6A)

1. Upon request, the Department will send application materials and fee information to persons needing to renew an existing permit or planning to initiate a new discharge.
2. An applicant may request a pre-application meeting to identify issues or discuss any aspect of the permitting process. This provides an opportunity for the applicant and project manager to discuss issues that will affect processing of the application. This first contact is important in defining regulatory requirements and identifying any potential issues that are anticipated, such as water quality problems, special regulatory restrictions or toxicity concerns. A pre-application meeting is required for new discharges over 25,000 gallons per day and for projects that will require more than one permit from the Department. The Department may waive a pre-application meeting if the meeting would be of no value.
3. At the applicant's request, a pre-submission meeting may be held on any application, after the application materials have been prepared. A pre-submission meeting is required in the same circumstances as is a pre-application meeting. It is also required in cases where an application was previously returned to the applicant by the Department due to being incomplete. The Department may waive a pre-submission meeting if the meeting would be of no value.
4. An application that requires a pre-application meeting also must be the subject of a public information meeting conducted by the applicant. This meeting is to be held prior to an application being filed with the Department and has special notice requirements. At least ten days prior to the meeting, the notice must be sent by certified mail to abutters and municipal officials. At least seven days before the meeting, the notice must also be placed in a newspaper having general circulation in the area of the proposed discharge. The informational meeting cannot be waived.
5. For all applications, the applicant must make public notice during the 30 days preceding the filing of the application with the Department. The notice must be sent by certified mail to all abutters and municipal officials and published in a newspaper of general circulation. The Department prescribes the format of the notice (see Appendix B) and a copy of the notice must be included with the application when filed. The public comment period on the application extends for the duration of the application's processing.
6. The application is filed with the Department.

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Figure 6A
Initial procession of permit applications

7. The application is reviewed for completeness for processing. This review is to assure that the application has all necessary information and all pre-application, pre-submission and notice requirements have been met. The Department must make the review within 15 days of receiving the application, and notify the application of its determination. In the event the review is not completed within 15 days, the application is deemed to be accepted for processing. However, the acceptance of an application does not constitute approval or preclude requesting of more information at a later date. An application that is found to be unacceptable for processing will be returned to the applicant with a notice of deficiencies. Before the application may be re-submitted, the applicant may be required to attend a pre-submission meeting with the Department, as described in 3 above.
8. If the application is accepted for processing, copies of the notice will be distributed to agencies on the Department's standard distribution list. Any person expressing interest in a particular application as a result of a public notice or informational meeting will be placed on the mailing list for that application and will receive copies of the application, draft permits (or denials) and other documents as appropriate, unless they waive receipt of some or all of these documents. At each regular Board meeting, the Commissioner provides a report of applications accepted for processing. The Board may request additional information on an application or consider assuming jurisdiction over that application.
9. Within 20 days of the Department's acceptance of an application, but at least 30 days after publication of the public notice, whichever is longer, interested parties must file requests for either the Board's assumption of jurisdiction or a formal public hearing. Additionally, persons receiving copies of draft permits have 30 days from the draft being sent in which to request a public hearing. Either the Board or the Commissioner may hold the public hearing.
10. The Department will decide to whether or not to recommend that the Board assume jurisdiction over an application. Alternately, and on its own initiative, the Board may request an opportunity to consider any application. If the Board is to consider an application, the matter is placed on the Board's regular meeting agenda, along with a Department staff recommendation. The processing steps for applications under the Board's jurisdiction are outlined in Part B. Processing steps for applications to be decided by the Commissioner are described in Part C. In both cases, the fundamental steps are similar.

B. Application Processing Steps by the Board (See Figure 6B)

1. Upon reviewing an application, the Board has three options: to assume jurisdiction and hold a public hearing; to assume jurisdiction without a public hearing; or to remand the application to the Commissioner (Part C).
2. If the Board decides to hold a public hearing, the hearing will be scheduled for a future time and the Department staff will make notice. Chapters 20, 30 and 522 of the Department's rules govern notice requirements and the conduct of hearings.
3. Following the public hearing or if no hearing is required, the Department staff will prepare a preliminary draft permit for internal review. This draft will be circulated to the facility inspector, water quality evaluation staff and other staff as appropriate, including the pretreatment coordinator, CSO program staff, enforcement staff, and other programs

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Figure 6 B
Consideration of permit applications by the Board

where the application involves multiple permits. As warranted by the comments received, revised drafts may be prepared and recirculated as necessary.

4. Once a preliminary draft has been developed and received internal review, it may be sent to EPA. The Memorandum of Agreement with EPA governs which draft permits will be sent to EPA and the time in which EPA will forward comments to the Department staff. EPA comments on the draft permit will be used to revise the draft permit, and revisions will be first reviewed internally and then forwarded to EPA. If EPA objects to a draft, the final permit will not be issued until the objections are satisfied.
5. Once EPA's comments on the preliminary draft permit have been addressed, a draft permit will be prepared and sent to the applicant and all interested parties of record. Comments on the draft permit or requests for a public hearing are to be made within 30 days. Based on the comments received, revisions may be made and these will be reviewed internally. If requested by EPA or if significant changes have been made in response to comments or a hearing, the revised draft permit will be sent to EPA, the applicant and other interested parties.
6. The draft permit and responses to comments, if any, will be placed on the Board's agenda as a Department staff recommendation for consideration. If a public hearing was held, a record of the hearing will also be provided to the Board.
7. The Board will consider the Department staff recommendations, comments received and the information from a public hearing. The Board may deny the application or grant a permit, either consistent with Department staff recommendations or with changes. If changes are required, a revised permit will be prepared by the Department staff and provided to EPA for comments if appropriate. The revised permit will then be placed on the Board's agenda for final action.
8. The final decision of the Board will be provided to the applicant, EPA and other parties of record. Any person aggrieved by a decision of the Board may, within 30 days, either request that the Board reconsider its decision or appeal to the Superior Court.

C. Application Processing Steps by the Commissioner (See Figure 6C)

1. The Commissioner may hold a public hearing or may choose to hold a public meeting if there are issues that do not warrant a formal hearing but do deserve public comment. A public hearing or public meeting would normally be held prior to preparation of a draft permit. However, a public meeting may be held at any time to address comments or concerns received by the Department, or in response to comments on a draft permit.
2. If the Commissioner decides to hold a public hearing, the Department staff will make notice. Chapters 20, 30 and 522 of the Department's rules govern notice requirements and the conduct of hearings.
3. Following the public hearing or if no hearing is required, the Department staff will prepare a preliminary draft permit for internal review. This draft will be circulated to the facility inspector, water quality evaluation staff and other staff as appropriate, including the pretreatment coordinator, CSO program staff, enforcement staff, and other programs where the application involves multiple permits. As warranted by the comments received, revised drafts may be prepared and recirculated as necessary.
4. Once a preliminary draft has been developed and received internal review, it may be sent to EPA. The Memorandum of Agreement with EPA governs which draft permits will be

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Figure 6 C

Consideration of permit application by the Commissioner

sent to EPA and the time in which EPA will forward comments to the Department staff. EPA comments on the draft permit will be used to revise the draft permit, and revisions will be first reviewed internally and then forwarded to EPA. If EPA objects to a draft, the final permit will not be issued until the objections are satisfied.

5. Once EPA's comments on the preliminary draft permit have been addressed, a draft permit will be prepared and sent to the applicant and all interested parties of record. Comments on the draft permit or requests for public hearing are to be made within 30 days. Based on the comments received, revisions may be made and these will be reviewed internally. If requested by EPA or if significant changes have been made in response to comments or a hearing, the revised draft permit will be sent to EPA, the applicant and other interested parties.
6. Following receipt of comments, a decision is prepared and issued by the Commissioner. The decision is filed with the Board, and the date of this filing begins the period the 30 days appeal period. Any person aggrieved by the Commissioner's decision may appeal the decision to the Board or to the Superior Court

D. Transfer, Modification and Termination of Permits

Under Maine law, the transfer of a permit to a new owner requires that an application be filed. That application is placed on public notice, as is any other application processed by the Department. The Department will issue an order approving or denying the proposed transfer of the permit to the new owner, contingent on the person's technical and financial ability to comply with the terms and conditions of the permit. Until the Department issues the order, the old and new owners are jointly and severally liable for compliance with the permit issued to the old owner. An application for the transfer of a permit is grounds for the revocation, modification or suspension of a permit.

The modification of permits is addressed at 38 MRSA, Section 414-A(5). A modification is considered to be an application, and public notice is required. Those persons identified as interested parties in the issuance of the existing permit will be sent the notice of the proposed modification. The processing of a request for permit modification generally follows the same steps outlined above for the issuance and reissuance of a permit. The permittee may initiate a request for modification for any reason. The Department may begin the process of modifying a permit for a number of reasons, as set forth in the 38 MRSA, Section 414-A (5).

Permits may be terminated if certain conditions specified in 38 MRSA, Section 341-D exist. Included in these conditions are ones essentially the same as those in 40 CFR 122.64. A terminated permit could be reissued with appropriate revisions or conditions to address the circumstances that necessitated the termination.

E. Public Participation

The Department's public comment period is open from the time an application is received until the final administrative decision is made. In addition to formal public hearings, informal public meetings may be held at any time if the Department sees a need to do so. For each application, the Department will maintain a document distribution list of all interested parties of record. The list will consist of persons who will be sent information on all applications or groups of

applications in which they may have interest. For example, the Department of Marine Resources will be involved only with discharges affecting marine waters. Persons commenting on the public notice of an individual application will be added the distribution list for that action. Copies of applications will be sent to EPA when they are accepted by the Department for processing. Normally, other interested parties will be provided with copies of the public notice and draft permits. However, other arrangements may be made if a party expresses interest in a specific aspect of an application or supporting materials. All applications accepted for processing are placed on the Board's regular agenda which is a public document. This allows an additional opportunity for public awareness of pending applications. At the time a draft permit is prepared, it will be provided to all interested parties of record. Persons sent draft permits will have 30 days in which to offer comments on the draft or to request that a public hearing be held.

F. Conditions of Permits and General Permits

Chapters 523, 524 and 525 of the Department's rules address Permit Conditions, Criteria and Standards, and Effluent Guidelines and Standards, respectively. These rules contain the same conditions and requirements as in the Federal Regulations parts 122, 125, 129, 133 and 401, et. seq. that apply to delegated state programs.

Chapter 529 of the Department's rules authorizes general permits. Draft general permits will be prepared by the Department and placed on public notice, and comments will be received any addressed notice in essentially the same manner as with any individual permit. Any person wishing to discharge under a general permit will be subject to the prohibitions, effluent limitations, and self-monitoring and reporting requirements of the permit. Each person must file a Notice of Intent for coverage and the Department may, within 14 days, reject the request for coverage and require an application for an individual permit. If the Department determines that any user of a general permit is not complying with that permit, an individual permit application may be required. The Department has historically made only very limited use of general permits and currently has none in effect at the state level. However, EPA Region I has issued some region-wide general permits applicable to some sources in Maine, and the Department has included special conditions in certifications of those permits.

G. Application Forms

Maine's wastewater discharge permitting program will generally use EPA application forms where they are available. The EPA forms will be supplemented with state forms for additional information. The State forms to be used are included in Appendix B. Proposed modifications to applications forms will be will be provided to EPA for comment before they are finalized. Modifications are generally handled through letters of request from permittees and no formal application form is required.

VI. Compliance Evaluation and Facility Assistance

Compliance evaluation involves conducting various activities designed to identify compliance problems, to remedy current or potential issues underlying compliance problems and to improve the performance of all NPDES facilities beyond the minimum necessary to simply maintain permit compliance. The primary goal is to foster voluntary compliance through actions to

minimize discharges of pollutants wherever possible. Compliance objectives are accomplished using a variety of tools and activities including review of discharge monitoring reports, compliance reports, trend tracking, compliance inspections, follow-up inspections, performance troubleshooting and technical assistance. The compliance and enforcement activities described below are coordinated with regular communications, meeting and reviews. The foundation for compliance efforts is the existing Performance Partnership Grant (PPG) and Memorandum of Understanding (MOU) on Compliance and Enforcement Process and Communications between the Department and EPA Region I. These documents will continue to be maintained following delegation of the NPDES program, and will set the general framework for conducting compliance programs.

A. Monitoring and Compliance Reports

Discharge Monitoring Reports using EPA's standard forms are printed and mailed to permittees by the Department on a monthly basis. The forms are required to be returned to the Department by the 15th of the month following the end of the monitoring period. The forms are received at the regional office for the area of the state in which the discharge sources are located. After the facility inspector checks the report, the data are entered in to the PCS system at the regional office. In addition to the standard EPA DMR report forms, the Department requires most treatment facilities maintain and submit monthly operational logs. A DEP form is provided for this purpose, although the use of similar forms developed by individual facilities is permitted. The results of toxicity testing are also submitted to the regional offices for preliminary review and are then forwarded to the Augusta office for data entry. Priority pollutant test results are reported electronically on computer diskette. Whole Effluent Toxicity tests are reported on a separate DEP form. In the event of noncompliance, a facility is expected to provide written notification by either a letter or a DEP supplied form. Finally, schedule items required by permit conditions, facilities plans or enforcement actions are submitted to the facilities inspectors and appropriate program staff in the Augusta office. Such schedule events are tracked using the PCS system, the CSO tracking system, the Compliance tracking system and by individual systems maintained by the facility inspectors.

B. Inspection types and targeting

The regional inspectors conduct various types of compliance inspections. The PPG will be used as the primary vehicle to target the frequency and types of inspection to be conducted from year to year. Targeting of inspections will include consideration of individual facility needs based on recent compliance records, the sensitivity of the receiving water, outstanding compliance schedules and pending technical issues. From time to time, the Department may conduct inspections focusing on specific themes to emphasize certain programs or topics. These inspections may be coupled with training programs or the implementation of changed regulatory requirements. Inspection visits will also be coordinated with permit or water quality studies that are ongoing in a region or watershed. In addition to planned inspection activities, additional visits will be made in response to compliance problems, citizen complaints and technical assistance needs. Inspections will be conducted following the procedures described in the NPDES Compliance Inspection Manual and other guidance documents, and may include the following types.

1. Compliance Evaluation Inspection (CEI). This is a non-sampling inspection designed to evaluate all aspects of a facility's compliance, including permit conditions, schedules, flow measurement, recording keeping, plant operations, and sampling and testing procedures. These areas may be reviewed randomly on any given inspection visit. Typically, this inspection constitutes a significant or "annual" inspection and is documented using EPA's form 3560 and state supplements.
2. Compliance Sampling Inspection (CSI). This inspection is similar to the CEI, except that influent or effluent samples will be taken for independent analysis. Samples will typically be split with the facility so analytical results can be compared.
3. Toxics Sampling Inspection (XSI). While similar to the CSI, this inspection is focused on non-conventional or toxic pollutants. Whole Effluent Toxicity (WET) test may also be included. An XSI requires more resources than other types of inspections and their use may be coupled with other Department efforts to review the quality and validity of self-monitoring reports. Because much of the toxicity testing is done by independent laboratories, quality assurance programs and performance review of those facilities are necessary to compliment inspections of permitted wastewater treatment plants. Laboratories doing chemical tests for compliance purposes are certified by the Health and Environmental Testing Laboratory in the State's Department of Human Services. The DEP certifies laboratories doing WET tests.
4. Performance Audit Inspection (PAI). These inspections are to evaluate permittees' self-monitoring programs by focusing in more depth on sampling, flow measurement laboratory procedures or data quality and management than would be done in CEI inspection. The inspector may observe the conduct of sampling or test procedures or evaluate equipment. Data recording, analysis and reporting may also be evaluated in detail, split samples any used.
5. Diagnostic Inspection (DI). These inspections are usually used to address particular compliance problems or operational issues at a treatment facility. The primary purpose is to identify and address the causes of non-compliance or threatened non-compliance events. The scope of these inspections is limited to discrete problems that can be corrected without major capital expenditures over a relatively short period of time.
6. Pretreatment Compliance Inspection (PCI). Pretreatment inspections may be conducted jointly with the regular facility inspector and the pretreatment program coordinator. These visits include a review of a POTW's monitoring, inspection and enforcement activities for its industrial users. Inspections of industrial users may also be conducted.
7. Reconnaissance or Routine Inspection (RI). This is a less formal inspection that allows Department staff to conduct more frequent visits and adapt their content. The inspector will perform a brief visual inspection of the major elements of the treatment process and effluent quality. Additionally, particular areas of interest or issues from previous inspections will be included. Routine inspections also provide an opportunity for Department staff to communicate with facility operators, to respond to problems, or questions they may have or to identify issues that may require subsequent visits.

C. Inspection procedures

Written inspection reports are made on all facility visits. A copy of the report is forwarded to the superintendent or the operator on site at the facility, and a copy is placed in the Department's general correspondence file the facility. Reports of 3560 type inspections and other

comprehensive inspections are forwarded to the EPA person responsible for compliance in Maine. Plant managers, sewer district trustees or town managers are provided with inspection reports where significant non-compliance is involved or if there are issues that may require management attention or capital expenditures.

If there are serious or recurring problems discovered through inspections or reviews of reports, these issues are discussed in the monthly Non Compliance Review (NCR) meetings described under the Enforcement Program below. In addition to actions recommended by the NCR committee, issues will be communicated to the facility officials and highlighted as especially important matters requiring serious attention. The inspector is expected to track the progress of actions taken and assure satisfactory responses are taken to address outstanding issues and to comply with schedule milestones.

The Department emphasizes active inspection follow up on treatment plant problems. Identifying problems during an inspection and recording them on the inspection forms is only the first step in the inspection program. This by itself may not lead to adequate voluntary problem resolution on the permittee's part, especially when large sums of money and effort are involved. Extensive inspection follow-up activities are often required where complex or expensive issues are involved. These activities may involve additional technical assistance on the inspector's part, requests for formal assistance from the Department's Technical Assistance Section, licensing actions, Department funding initiatives or referral for formal enforcement action.

Where appropriate, the Department uses the EPA 3560 inspection form for reporting the results of inspections. This form is supplemented with additional pages to explain the basis for findings. Additionally, a number of other forms are used for routine inspections and areas of particular interest such as pump stations, laboratory tests or specific treatment processes.

D. Technical Assistance

An important part of the Department's compliance effort is technical assistance. The Technical Assistance Section is located in Augusta but available to inspectors and treatment facilities statewide. The section's staff provides technical advice, studies and data evaluation to address program issues and matters of concern to many facilities. Additionally, they provide in-depth performance and facilities review for individual facilities to support the inspection staff in resolving more difficult or complex compliance problems. The section also prepares and presents training programs for both Department staff and operators of municipal and industrial treatment facilities. The technical assistance staff works with the compliance and enforcement sections to assist in evaluating the causes of violations and development of possible corrective actions.

E. Multimedia and Over Board Discharge Inspections

On the state level, limited multi-media inspections are conducted on an as needed basis in response to serious noncompliance or system problems. For example, Air and Water staff may respond to an odor complaint at an industrial facility that has both an air emission permit and a wastewater discharge permit. Solid Waste and Water staff may jointly inspect a site that has both wastewater treatment and landfill operational problems. Multi-media evaluations are sometimes done in support of formal enforcement actions. Inspection activities are occasionally

conducted to support EPA Multi-media inspections. In this case, the EPA is the lead agency and the State inspector participates at their request in a support role only.

In addition to traditional NPDES facilities, the Department maintains an inspection program for Over Board Discharge sources. OBD inspections are mandated by State law, and the majority of these sources are inspected twice per year. One full time and several seasonal staff persons are involved in this effort.

VII. Pretreatment Program

Chapter 528 of the Department's rules establishes the pretreatment program in Maine; the program is essentially the same as the Federal program at 40 CFR part 403. Publicly owned treatment works (POTWs) with a total design flow greater than 5 million gallons per day (mgd) may be required to establish a pretreatment program. POTWs with a design flow of less than 5 mgd but with significant industrial contributions that may pass through or interfere with the operation of the POTW may be required to establish a pretreatment program. Industrial users in other communities may be required to comply with pretreatment standards without the POTW having to develop a full pretreatment program. Categorical industrial users discharging to POTWs without an approved pretreatment program must meet, at a minimum, Federal Categorical Pretreatment Standards.

There are currently thirteen EPA approved pretreatment programs in Maine, and no pending applications. Eight industrial dischargers report monitoring results directly to EPA.

A. Program Approvals

Requests for program approval will be sent to the Pretreatment Coordinator. Pretreatment program applications will be processed in the same manner as other applications, consistent with the procedures in Chapters 2 and 522, and using the criteria in Chapter 528. No pretreatment program will be approved if the EPA Regional Administrator sets forth, in writing, objections to the approval and reasons for the objections. A public notice of the final decision of the Department must be printed in the same newspaper that published the original request.

The Pretreatment Coordinator will review and approve all POTW pretreatment program related functions. All municipal permit applications request information on significant industrial users. When applications are received, those with significant industrial users or those that meet other requirements of Chapter 528 will be copied to the Pretreatment Coordinator. If a POTW appears to be a probable pretreatment program candidate, additional information will be requested to further clarify the necessity of a program. Appropriate pretreatment permit conditions and reporting schedules for approved programs will be incorporated into the POTWs discharge permit upon the recommendation of the Pretreatment Coordinator. At a minimum, an approvable Pretreatment Program must contain:

1. Proper legal authority.
2. Implementation procedures such as inspections and annual monitoring to ensure compliance with the requirements of an approved Pretreatment Program.

3. Sufficient funding to ensure resources and qualified personnel to carry out the authorities and functions of the program.
4. Development of local limits as required.
5. Development of an enforcement response plan.

Industrial Users that are considered categorical will be regulated by the standards incorporated into Chapter 525. Categorical determinations of industrial users will be made by the Department upon request be either the POTW or the industrial user. A POTW with an approved pretreatment program may request the revision of one or more of the categorical pretreatment limits to reflect the consistent removal of the pollutant(s) by the POTW. The issuance of removal credits must not have any effect on the POTWs approved sludge disposal method or its compliance with effluent standards. POTWs with authorization to grant removal credits for specific pollutants will modify the categorical standards in Chapter 525 for those pollutants by the removal credit.

An industrial user, a POTW or an interested party may request a variance from categorical pretreatment standards for fundamentally different factors. The factors that will or will not be considered are contained in Chapter 528, section 13(c). Fundamentally different factors will not be approved if the EPA Regional Administrator files an objection to a proposed approval and the reasons for the objection.

B. Monitoring and Compliance

POTWs with approved programs must maintain records of all self-monitoring reports submitted by permitted industries. All categorical and significant users must be sampled and inspected annually by the POTW, or at a frequency specified in their indirect discharge permit. The POTW must submit an annual report to the Department containing all of the items on an Industrial Pretreatment Annual Report checklist.

The Pretreatment Coordinator will conduct periodic inspections of all POTWs with approved programs. During these inspections records will be reviewed and samples taken, if necessary. More in-depth program audits will also be conducted. These inspections will require a thorough file review and site visits to industrial users. Compliance actions by POTWs against problem industries within a program will be reviewed against approved program requirements. Program audits and inspections will result in program recommendations, possible program modifications or enforcement actions against an industrial user, the POTW, or both. If necessary, EPA assistance in resolution of compliance problems will be sought.

If the Enforcement Section identifies POTWs that appear to have pass through or interference problems, a referral will be made to the Pretreatment Coordinator. The Pretreatment Coordinator will request further information, consult industrial registers and make site visits to determine the necessity for a pretreatment program. If problem industries are identified but a full program is not deemed necessary local user permits may be required, and the Department will review these as they are prepared.

The Pretreatment Coordinator will conduct educational programs and aid the POTWs in pollution prevention activities such as the Municipal Water Pollution Prevention Program.

VIII. Enforcement

The general enforcement procedures and priorities for the NPDES program are described in the existing PPG and MOU, and these documents will continue to serve as the foundation for Maine's compliance efforts following delegation of the NPDES. As has been the practice for many years, DEP will continue to conduct Quarterly Non-Compliance Reviews (QNCR) with EPA through meetings or conference calls. These regularly scheduled reviews are supplemented with frequent meetings, telephone calls and e-mail messages on both specific compliance problems and program issues of common interest. In addition to entry of DMR data into PCS and traditional QNCR reports, the Department uses data downloaded from PCS to summarize compliance, and evaluate trends in performance. The section on Data Management describes these systems in more detail.

The Enforcement Section's intent is to maintain a strong and positive enforcement presence to support other Water Program functions. The primary objective is to resolve all compliance problems at the lowest appropriate level to avoid serious or lengthy violations. Simultaneously, the Department is prepared to pursue formal civil and criminal action for all violations that require such actions. While support of traditional NPDES significant non-compliance issues (effluent, reporting and schedule violations by major and significant minor facilities) is the Enforcement Section's first priority, it also supports a number of other Water Program efforts as needed. These include citizen complaints, water quality problems, non-point source discharges, unpermitted discharges, sanitary surveys and multimedia issues. Maine's waste discharge laws are very broad, covering direct and indirect discharges to both surface and ground waters, and interface with land use, hazardous waste and other laws administered by the Department. Accordingly, Enforcement Section staff works with those programs to review violations, assist in case preparations and conduct multimedia enforcement actions.

A special priority for Maine's Water Program is shellfish restoration. The Enforcement Section dedicates considerable effort to conduction sanitary surveys and investigation of complaints in order to eliminate illegal discharges of sanitary wastes that close or restrict shellfishing in high priority areas. This work is coordinated with the Department of Maine Resources, local officials and other groups.

A. Compliance Tools and Review Procedures

The Department has a general compliance policy under which all programs operate. That policy lists a variety of compliance and enforcement tools that may be applied as the circumstances of a situation demand, and includes:

Education and Outreach	Letter of Warning	Referral to Attorney General
Technical Assistance	Notice of Violation	Action in District Court (Rule 80(k))
Voluntary Compliance	Consent Agreement	Referral to EPA
Permit Conditions	Enforcement Hearing	

These tools are more fully described in the Department policies on Compliance and Administrative Consent Agreements attached in Appendix C. The Department also has policies

on Small Business Compliance Incentives, Supplemental Environmental Projects and Compliance Assessment Incentives Policies. In addition to the Department's compliance policies, the Water Program has a more specific compliance policy (Appendix C) that is focused on program-specific issues and procedures.

The Water Program uses monthly Non Compliance Review (NCR) meetings to discuss all instances of discovered non-compliance. The meetings are attended by sections heads each of the four regional offices, the enforcement section head, licensing section staff, the Water Resource Division Director, the pollution prevention/technical assistance unit supervisor, CSO program personnel and the Engineering and Technical Assistance Division Director. On occasion, other staff may attend as specific issues of interest arise. During these meetings, general compliance issues and policies may be discussed. Compliance problems at individual NPDES facilities are also discussed, including effluent violations, spill or bypasses, schedule compliance issues, and testing. The screen for violations is more comprehensive than EPA's Significant Non-Compliance criteria and a full range of formal and informal compliance tools is considered. All cases of significant non-compliance are reviewed and acted upon, with emphasis given to problems continuing for more than one quarter. The primary emphasis is to obtain compliance using the least formal means appropriate to the situation. Technical assistance or preventative measures to avoid violations are sought out if possible. The NCR meeting provides an opportunity for inter-regional and inter-program coordination to address compliance and technical problems at NPDES facilities.

For non-NPDES violations, appropriate enforcement, inspection and licensing staff review each case and select an appropriate course of action. Initially, staff discusses non-compliance situations discovered in regional offices with the regional supervisor or the enforcement staff in Augusta in order to make an initial determination on the severity of the violations and preliminary actions to be taken. In addition to the monthly NCR meetings, quarterly QNCR meetings are held with EPA, as described in the PPG and MOU on compliance and enforcement.

B. Formal Enforcement Actions

Administrative consent agreements are used to settle the majority of formal enforcement cases. These are negotiated agreements between the violator, the Board of Environmental Protection and the Attorney General. The agreements typically include payment of a monetary penalty in addition to corrective actions necessary to prevent recurrence of the violation. Under Rule 80(k) of the Maine Rules of Court, certain Department staff are certified to prosecute violations in District Court on behalf of the State. Rule 80(k) actions, while applicable to all laws administered by the Department, are best suited to smaller discharge sources and situations where the facts of the cases are relatively clear and straightforward. For violations that cannot be resolved by agreement with the violator, are especially serious, or involve precedents or legal principles, the case may be referred to the Attorney General's Office for Superior Court action. The formal referral is accomplished through a memorandum of transmittal from the Commissioner to the Attorney General. Before a case is formally referred, there are typically discussions between the enforcement section staff, the Commissioner's Office and the Attorney General's Office. This pre-referral discussion allows for screening of cases suitable for litigation and helps the Department to prepare the facts of the cases. Once formal referral has been made, the enforcement section staff work with the Attorney General's Office as necessary to assist in

preparation and to track progress of the case. Alternatively, a case may be referred to EPA for enforcement action.

When a formal enforcement action is necessary, it is prepared by the Water Program enforcement staff. The staff person will work closely with other program staff involved with the situation in order to collect the facts surrounding the violation and to develop appropriate corrective measures. The proposed action is reviewed by the enforcement section supervisor, the Division Director, the Bureau Director, the Commissioner's Office and the Attorney General's Office. As each enforcement case is investigated and developed, the facts are reviewed for possible criminal violations. If criminal violations are suspected, the matter is immediately discussed with the Commissioner's Office and the Attorney General. Once an enforcement settlement is reached, the enforcement section staff is primarily responsible for tracking compliance schedules. Where the violator is a permitted NPDES source, the facility inspector will assist in the tracking compliance and progress is monitored through the monthly Non-Compliance Review meetings.

The Department has the authority to issue compliance orders under 38 MRSA, Section 347-A(2). Such orders may be issued unilaterally only after a hearing. However, the respondent may waive the opportunity for a hearing and voluntarily enter into compliance order. This route is available as a means for the Department to impose compliance schedules in certain situations, such as for new permit conditions where a compliance schedule cannot be placed in the permit itself.

C. Citizen Complaints

The Enforcement Section responds to most citizen complaints regarding suspected illegal discharges. Complaints involving NPDES permittees are investigated by the inspector assigned to that facility and questions about water quality are addressed by the Division of Environmental Assessment. Frequently, discharges of silt are associated with forest harvesting practices, development or other land use activities. These cases are typically addressed by the Bureau's Division of Land Resource Regulation since that division has regulatory control over the activities causing the problem. Some complaints involving agricultural practices are forwarded to the Department of Agriculture for initial investigation and technical assistance. Where a suspected discharge may involve locally administered laws such as the State's plumbing code, local officials are contacted and can often resolve the problem. In all cases, the Enforcement Section tracks the progress of other groups and is prepared to take the lead in pursuing enforcement actions as necessary. The Department's authority to make the final decision regarding whether to take enforcement action regarding any NPDES program violation is not and will not be delegated to any of these entities. The Enforcement Section staff in the Augusta office maintains a complaint tracking system that is available in all regional offices for staff in who investigate complaints in those areas. If formal enforcement action is needed, the region doing the initial investigation will forward the case to the Enforcement Section staff in Augusta. As complaints are investigated, the person who made the complaint is informed of the results or progress. This may be done in writing if the complainant's address is available, or by telephone if only a number is available. Often, persons wish to remain anonymous, and contacting them is not possible.

D. Public Participation

Public participation in the formal enforcement process is provided under 38 MRSA, Section 347-A (6). After a person signs an administrative consent agreement, the agreement is placed on the Board's agenda for approval before it becomes final. Through posting on the Board's agenda, the agreement is made available to public comments. Written comments may be submitted to the Attorney General and the Department, and summaries of the comments will be provided to the Board at the time it considers approval of the consent agreement. A similar process exists for judicial settlements by consent. If negotiations lead to proposed consent decree in lieu of an adversarial court action, a public notice of a proposed consent decree would be published in a newspaper before the decree is presented to the Court for approval. Public comments received by the Attorney General and the Department will be filed with the Court.